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*Assessing the Impacts of the Central Valley Project  
Improvement Act*

Presented to the  
Subcommittee on Water and Power  
U.S. House of Representatives  
Committee on Resources

March 24, 2006

Mr. Chairman, members of the Committee: Good morning. I am Thomas Birmingham, General Manager/General Counsel of Westlands Water District, and I appreciate the opportunity to appear before you today to discuss an issue of vital importance to the State of California, indeed, the nation.

At the outset, I would like to express our appreciation for your decision to conduct this hearing. There exists a great need to assess the impacts of the Central Valley Project Improvement Act, and Westlands is particularly grateful to Representative Devin Nunes for the introduction of HR 3691, the Central Valley Project Reform Act. If enacted HR 3691 would further at least two of the original purpose of CVPIA, improving the operational flexibility of the Central Valley Project and achieving a reasonable balance among competing uses of Central Valley Project water. Enactment of HR 3691 would also help sustain agriculture in the San Joaquin Valley, an industry that provides significant benefit to the state and the nation.

Westlands Water District is a California water district that serves irrigation water to portions of the westside of the San Joaquin Valley in Fresno and Kings counties. The District is comprised of more than 605,000 acres, and it averages 15 miles in width and is 70 miles long. The demand for irrigation water in Westlands is 1.4 million acre-feet per year. Historically, that demand has been satisfied through the use of groundwater, water made available to the District from the Central Valley Project under contracts with the United States for the delivery of more than 1.15 million acre-feet, and annual transfers of water from other water agencies.

Westlands is one of the most fertile, productive and diversified farming regions in the nation. Rich soil, a good climate, and innovative farm management have helped make the area served by Westlands one of the most productive farming areas in the San Joaquin Valley and the nation. Westlands farmers produce over 50 different commercial fiber and food crops sold for the fresh, dry, canned or frozen food markets; domestic and export.

Westlands estimates that the value of crops produced by farmers in the District exceeds \$1 billion per year. Using a well-accepted economic assumption that every \$1 produced on-farm generates another \$3.50 in the economy, Westlands farmers produce nearly \$3.5 billion in economic activity annually. Like every other region of the arid west, the ability of our farmers to produce crops and generate this economic activity depends on the availability of an adequate, reliable source of water.

As indicated above, farmers in Westlands have relied on three sources of water: (1) groundwater; (2) water made available to Westlands from the Central Valley Project under its water service contracts with the United States; and (3) annual water transfers. Water deliveries from the Project began in 1967. And up until 1991, those deliveries were reliable, and in fact were the principal source of water for irrigation within Westlands. From 1967 to 1991, our water supplies were reduced only two times; in 1977 and 1978. . This reduction was a result of the extraordinary drought conditions in 1977, the driest

year on record in California. However, in 1992, when CVPIA was enacted, a new era of Project operations began.

The purposes of this Act were:

- (a) to protect, restore, and enhance fish, wildlife, and associated habitats in the Central Valley and Trinity River basins of California;
- (b) to address impacts of the Central Valley Project on fish, wildlife and associated habitats;
- (c) to improve the operational flexibility of the Central Valley Project;
- (d) to increase water-related benefits provided by the Central Valley Project to the State of California through expanded use of voluntary water transfers and improved water conservation;
- (e) to contribute to the State of California's interim and long-term efforts to protect the San Francisco Bay/Sacramento-San Joaquin Delta Estuary;
- (f) to achieve a reasonable balance among competing demands for use of Central Valley Project water, including the requirements of fish and wildlife, agricultural, municipal and industrial and power contractors.

#### Water Supply Reductions

The CVPIA has been implemented by the Department of the Interior in a manner that has reallocated more than 1,200,000 acre-feet of Project water away from farms, ranches and business that relied upon this water for decades to the environment – for the restoration and enhancement of fish and wildlife. Contrary to the assumption at the time of CVPIA's enactment, that it would reduce water supplies by approximately 10% Project wide, virtually all of the water supply reductions resulting from implementation of the Act have been borne by south-of-Delta Central Valley Project agricultural water service contractors. The reliability of water supplies for the 24 south-of-Delta CVP agricultural water service contractors went from approximately 92% in 1991 to approximately 50% in 2000, when the CalFED Record of Decision was adopted. Although this reliability has improved since 2000 as a result of the exercise of discretion by the Bureau of Reclamation and the Fish and Wildlife Service, there is great fear that a change in administration will result in a loss of these gains. CVPIA's impact on south-of-Delta irrigation supplies is best demonstrated by allocations to south-of-Delta agricultural water service contractors this year, a year that is projected to be above normal or wet. Although

precipitation in the area from which our water comes is significantly above average and there is a plentiful snow pack, our allocation is only a 65%<sup>1</sup>.

Among the provision of CVPIA that has had a dramatic impact on south-of-Delta water service contractors is section 3406(b)(2). This section of the law directed the Secretary of the Interior to dedicate and manage annually 800,000 acre-feet of Project yield “for the primary purpose of implementing the fish, wildlife, and habitat restoration purposes and measures authorized by [CVPIA]; to assist the State of California in its efforts to protect the waters of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary; and to help meet such obligations as may be legally imposed upon the Central Valley Project under state or federal law following the date of enactment of this title, including but not limited to additional obligations under the federal Endangered Species Act.” Section 3406(b)(2) has been the subject of multiple lawsuits and court decisions. Those decisions have held that Interior must account for the water it uses pursuant to its (b)(2) authority and that it can use no more than 800,000 acre-feet of water under that authority. Despite, these decisions, Interior frequently uses more than 800,000 acre-feet for (b)(2) purposes. For instance, in 2004 water year (October 2003 – September 2004), Interior used 959,000 acre-feet of water for the purposes described in section 3506(b)(2).<sup>2</sup>

What is most ironic about the manner in which section 3506(b)(2) is managed, particularly given that improved operational flexibility of the Central Valley Project is among CVPIA’s purposes, is that water supplies for south-of-Delta agricultural water service contractors can actually increase during dry and below normal years compared to above-normal years. As an example, January 23, 2003, Reclamation announced its initial water supply outlook for the 2003-2004 contract year. This forecast was based on January 2003 water runoff information prepared by the California Department of Water Resources, which followed a wet December 2002. The forecasted allocation for south-of-Delta agricultural water service contractors was 50%. January 2003 was dry, and logic would have dictated that the allocation would have remained the same or would have been reduced. However, because hydrologic conditions in January were dry, the allocation announced on February 14, 2003, increased to 60%.

There are two primary uses of (b)(2) water: (1) “Upstream Actions” to increase instream flow for the benefit of anadromous fish; and (2) “In-Delta Actions” to reduce exports at the Tracy Pumping Plant for the benefit of anadromous or pelagic fish. The anomaly described above occurs because in wet years or above normal years, Interior’s need to use (b)(2) water to increase instream flow to benefit anadromous fish is reduced or eliminated. In those year types desired flow is provided by natural runoff. This enables Interior to use more (b)(2) water to impose additional export reductions, with concomitant water supply reductions for south-of-Delta agricultural water service contractors. In below normal and dry years, (b)(2) water is used to increase instream flow for the benefit of anadromous fish, and Interior’s ability to reduce exports is

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<sup>1</sup> A graph depicting year to date precipitation is attached hereto as Exhibit A.

<sup>2</sup> A summary of Interior’s (b)(2) accounting for the 2004 water year is attached hereto as Exhibit B.

diminished, with concomitant water supply improvements for south-of-Delta water service contractors.

Another provision of CVPIA that has reduced water supplies for south-of-Delta agricultural water service contractors is section 3406(d)(1), which directed the Interior Secretary to deliver specified quantities of water (“Level 2 supplies”) to designated wildlife refuges. In the San Joaquin Valley this resulted a direct reallocation of more than 300,000 acre-feet of water from agricultural water service contractors to the wildlife refuges. This reallocation results annually in a 15% reduction in Project water supplies to south-of-Delta agricultural water service contractors, and despite unambiguous direction to “diversify sources of supply in order to minimize possible adverse effects upon Central Valley Project contractors,” Interior has only recently begun to explore alternative means of making available to refuges Level 2 supplies.

In response to diminished water supplies from the Central Valley Project, Westlands’ farmers have substantially modified their irrigation techniques. First, more reliance has been placed on the use of groundwater. In 2004, farmers in Westlands pumped more than 210,000 acre-feet of groundwater for irrigation. This is significantly more than the USGS estimate of the safe yield of the groundwater basin, 135,000 acre-feet. The extent to which farmers have to rely on groundwater is disturbing because it is contrary to sound principals of conjunctive use, which dictate that in wet or above normal years, groundwater use should be reduced to allow the groundwater table to recover.

Chronic water supply shortages caused by CVPIA have also resulted in significant land fallowing. To date, Westlands has acquired and fallowed approximately 89,000 acres of land to help balance the demand for water with the District’s available supply. Westlands has also acquired all of the lands in Broadview Water District and the water service contracts of Widren Water District, Centinella Water District, and Mercy Springs Water District. Lands in these other districts that were previously irrigated with the Project water purchased by Westlands have been retired from irrigated agricultural production. In the San Joaquin Valley land fallowing results in third party impacts, which disproportionately affect the poor and minorities.

About the issue of agricultural lands going out of production because of water supply shortages caused by CVPIA, the late Marc Reisner, author of *Cadillac Dessert* and a frequent critic of irrigated agriculture in the American west wrote:

Agricultural land protection may be the single most significant issue that has for all intents and purposes been left out of the CVPIA implementation process. This is unfortunate, because there are unhappy similarities between the farmland protection issue today and the salmon conservation issue fifty years ago.

*Reisner, Marc, “Farmland Protection, A New Approach to Saving California's Best Agricultural Lands” (September 1997).*

### Contract Renewal

Another activity related to CVPIA involves renewal of water service contracts. In November 1997 Westlands entered into binding agreements with the United States to renew its water service contracts prior to their expiration. Westlands entered into these agreements to avoid a surcharge that otherwise would have been imposed pursuant to CVPIA section 3404(c)(3). Negotiations between Westlands and the United States began in August 1999 and were recently completed. On February 16, 2006, Reclamation released the proposed form of renewal contract between Westlands and the United States for a second round public review and comment. It is anticipated that an environmental impact statement on renewal of the Westlands contract and other San Luis Unit contracts will be completed and that a record of decision issued in the summer of 2006.

I recite these facts because it is important for the Committee to understand the history of these contract negotiations. The proposed renewal contract between Westlands and the United States, and in particular its provisions concerning the quantity of water that will be made available to Westlands, its 25-year term, and its water rates, has been the subject of significant criticism. Numerous environmental advocacy groups and some members of Congress have suggested that these provisions, which they view as favorable towards Westlands, were included because the current administration is favorably disposed toward Westlands, and the current administration is unconcerned about environmental impacts resulting from the renewal of this contract. The history of the renewal contract negotiations belies these assertions. Each of the terms about which the environmental advocacy groups complain were negotiated under the direction of former Secretary of the Interior Bruce Babbitt. Prior to January 2001, negotiations between Westlands and the United States produced agreement concerning the maximum quantity of Project water that Westlands would be entitled to receive, the 25-year term (with a right to a subsequent renewal for an additional 25 years), and the rates that would be paid for Project water delivered under the contract. Those provisions of the renewal contract have not changed subsequent to January 2001. Moreover, many of the provisions of the Westlands renewal contract are prescribed by statute. These include the Secretary's mandatory duty to renew the contract, the 25-year term, and the rates that to be charged for Project water delivered to Westlands. Finally, the renewal contract contains a shortage provision that allows Reclamation to reduce the quantity of Project water to be made available to Westlands if necessary to comply with environmental law.

The suggestion repeatedly reported in the press that Westlands has received favored treatment from a "friendly" administration is baseless.

### Restoration Fund Payments

Among the provisions of CVPIA that have dramatically affected the cost of Project water delivered is section 3407, which imposed a restoration fund payment for each acre-foot of Project water delivered. The restoration fund payments were intended to provide a source of revenue to carry out the habitat restoration activities authorized by the Act, and

according to Interior financial records, during the fiscal years 1993 through 2004, inclusive, Interior expended \$373,237,686 from the restoration fund for these purposes. The current restoration fund rate is \$8.24 per acre-foot of Project water delivered to agricultural water service contractors.

CVPIA expresses an unambiguous Congressional intent “that upon the completion of the fish, wildlife, and habitat mitigation and restoration actions mandated under section 3406” the restoration fund payments would be reduced by 30%. Numerous water service contractors, including Westlands, maintain that many of the mitigation and restoration actions mandated by section 3406 are complete, and they are concerned that unless criteria are established to determine when other actions will be complete full restoration fund payments will be a never ending obligation.

In January 2006 Interior announced that it would initiate a process to better define the scope of restoration actions mandated by section 3406 and establish performance measures and criteria to determine when each mandated action is complete. Interior stated its purpose was to promote transparency and accountability in the management of section 3406 activities, and it invited contractors and representatives from other interested groups, including environmental advocacy groups, to participate in that process. Contrary to assertions by some environmental advocacy groups, Interior’s purpose is not to reduce the amount of money available for implementation of the habitat restoration activities. Indeed, Westlands does not anticipate that the initiative will result in reduced restoration fund payments in the near term. Westlands applauds Interior’s effort, however, because if Interior is successful, it will be more able to prioritize the use of restoration funds and more efficiently manage restoration activities in furtherance of CVPIA goals.

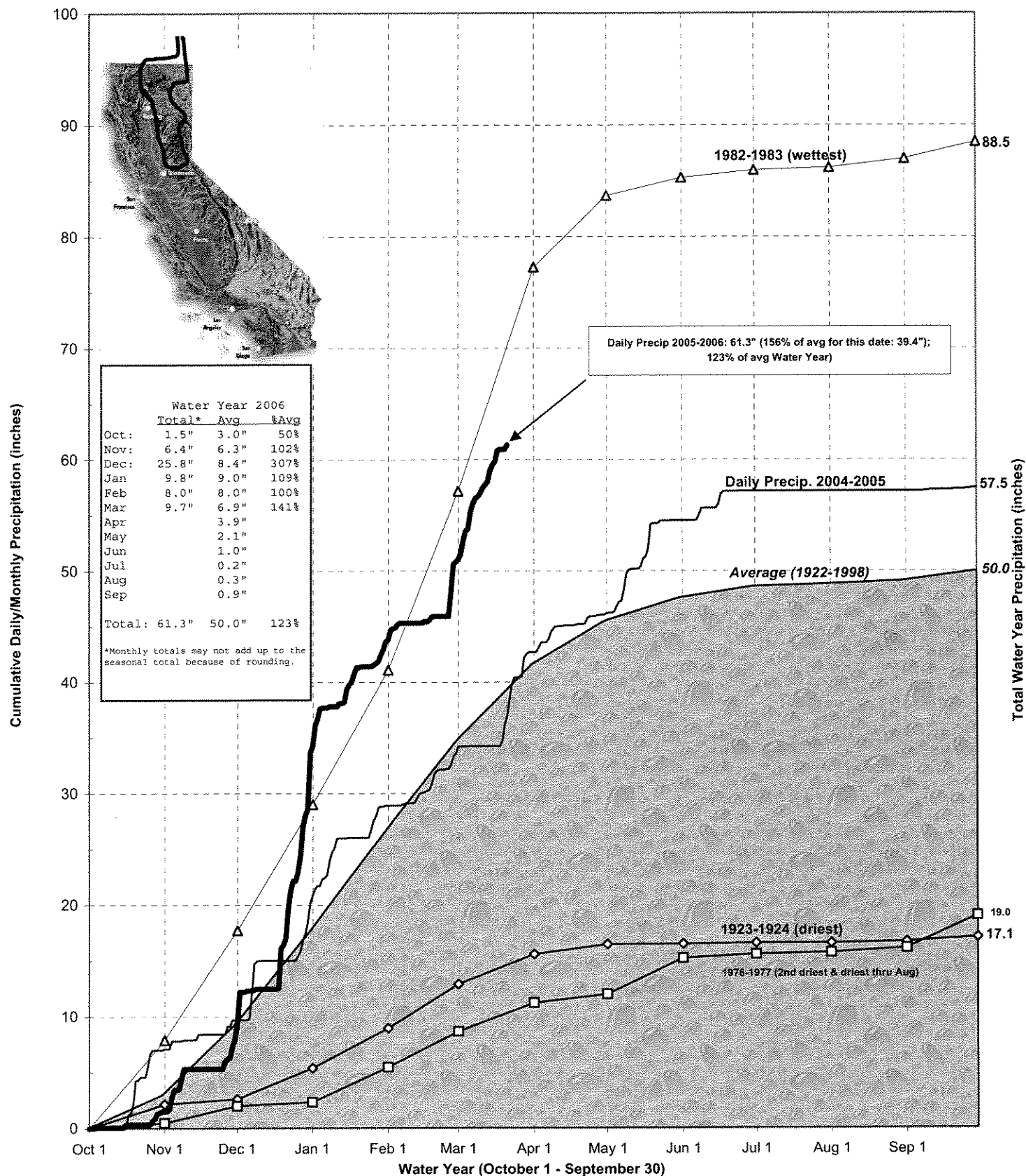
### Conclusion

No one could reasonably dispute that CVPIA has achieved significant benefits for fish and wildlife. Most notably, CVPIA enabled a remarkable recovery of salmon runs in the Sacramento River and its tributaries. However, the purposes of CVPIA have not been fulfilled. Rather than improving the operational flexibility of the Central Valley Project, CVPIA has severely restricted Project operational flexibility. Rather than achieving a reasonable balance among competing uses of Central Valley Project water, CVPIA has created an absolute priority for environmental uses of water. It has been more than 12 years since CVPIA was enacted, and now is an appropriate time to assess CVPIA to determine how it should be reformed.

Thank you. I would be happy to respond any questions.

# Northern Sierra Precipitation: 8-Station Index\*

March 21, 2006



\*The average of eight precipitation stations serves as a generalized wetness index for the Sacramento River hydrologic region. It provides a representative sample of the region's major watersheds: the upper Sacramento, Feather, Yuba, and American rivers, which produce inflow to some of California's largest reservoirs--the source of much of our water supply. The eight stations are: Blue Canyon, Brush Creek RS, Mineral, Mount Shasta City, Pacific House, Quincy RS, Shasta Dam, Sierraville RS. Official seasonal runoff forecasts are based on many more measurements than this index, including snowpack and prior streamflow. These seasonal forecasts are a much more accurate measure of water supply.



| Description of Action   | 2004 B2 Accounting<br>Volume Spent (TAF) |            | Comments  |
|---|--|------------|---|
|   | Monthly                                  | Cumulative |   |
| October-Fall Run<br>Clear Creek flows increased<br>Stanislaus R. flows increased  | 6.6                                      | 6.6        | Some B1 water also between Clear Cr. and Keswick releases   |
| November-Fall Run<br>Clear Creek flows increased<br>American R. flows increased for spawning protection.<br>Stanislaus R. flows increased.  | 15.7                                     | 22.3       | Some B1 water also between Clear Cr. and Keswick releases   |
| December-Fall Run/Steelhead<br>Sacramento R. increased flow.<br>Clear Cr. flows increased.<br>American R. flows increased.<br>Stanislaus R. flows increased.<br>Delta Exports reduced due to Cross channel closure WQ.(5.8 TAF)             | 33.2                                     | 55.5       | No apparent B1 operation.<br>Flood control ops. at Shasta and Folsom Res.   |
| January-WR/Spr. Run/Steelhead<br>Sacramento R. increased flow.<br>Clear Cr. increased flow.<br>Stanislaus R. increased flow.  | 22.8                                     | 78.3       | No B1 operation.<br>Flood control ops. at Shasta and at Folsom Res.   |
| February-WR/Spr. Run/Steelhead/WQCP<br>Sacramento R. flows increased.<br>Clear Cr. flows increased.<br>Stanislaus R. flows increased.<br>Delta exports cut for "functional equivalent" of Vern. flow obj.(18.7 TAF)                         | 80.1                                     | 158.4      | No B1 operation.<br>Flood control ops at Shasta and Folsom Res.   |
| March-WR/Srp. Run/ Steelhead<br>Sacramento R. flows increased.<br>Clear Cr. flows increased.<br>Stanislaus R. flows increased.<br>Delta exports lower in B2 case due to different SL oper. in base case.(14.2 TAF)                          | 37.0                                     | 195.4      | No B1 operation.<br>Flood control ops at Shasta and Folsom Res.   |
| April-WR/Spr. Run/Steelhead/WQCP/Vamp<br>Sacramento R. increased for X2.<br>Clear Cr. flows increased.<br>American R. incr. for X2 and instr. needs<br>Delta exports reduced for X2 and Vamp  | 464.3                                    | 659.7      | No B1 operation.<br>X2 costs approx. 250 TAF(upstr+delta)<br>Vamp export cost using B2 approx 114 TAF.<br>Some EWA also used (7 TAF)  |
| May-WR/Spr. Run/Steelhead/WQCP/Vamp<br>Clear Cr. flows increased.<br>American R. flows increased.<br>Stanislaus R. flows increased post Vamp pulse flow.<br>Delta exports reduced for Vamp.   | 115.3                                    | 775.0      | No B1 operation.<br>Vamp B2 costs approx. 67 TAF.<br>EWA also used to reduce exports further (CVP approx. 59 TAF)   |
| June-WR/Spr. Run/Steelhead/WQCP<br>Clear Cr. flows increased.<br>American R. increased for WQCP<br>Stanislaus R. increased.<br>Delta exports exceeded the "3000 cfs D1485" limit, so the replacement pumping owed is reduced by (48.5 TAF). | 29.0                                     | 804.0      | No B1 operation.<br>The accounting shows 9.3 TAF of the 29 as "non-B2 fishery actions". The actions that make up this 9.3 are in part from the American R., Clear Cr., and the Stanislaus R.. |
| July-WR/ Spr. Run/ Steelhead<br>Clear Cr. flows increased slightly  | 0.3                                      | 804.3      | No B1 operation.  |
| August-WR/Spr. Run/ Steelhead<br>No B2 water spent upstr.<br>Exports cut for D1485 replacement water.   | 78.0                                     | 882.3      | No B1 operation.<br>The 78 TAF was considered a "non-B2 fishery action"   |
| September-WR/Spr. Run/Steelhead<br>Clear Cr. increased for Spr. Run<br>Exports cut for D1485 replacement water.   | 76.7                                     | 959.0      | No B1 operation.<br>72 TAF was considered a "non-B2 fishery action"   |